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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,642	03/25/2004	Charlotta Hansson	018798-225	7497
21839 7590 05/07/2007 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 05/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/809,642

Applicant(s)

HANSSON ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 2/8/07 have been fully considered but they are not persuasive. Applicant argues the structure taught in Van Phan is not similar to the claimed invention and therefore, the Examiner has provided no evidence that a product made according to the teachings of Van Phan would be identical or substantially identical to a product made according to the present invention. Applicant cites paragraphs 0027, 0028, 0038, and 0039 of the specification as providing considerable detail as to how the polyacrylate-based foam of the embodiments of the present invention are constructed. However, Applicant's arguments are not commensurate with the scope of the claims. Van Phan does not explicitly teach the claimed properties of Gurley stiffness and the drainage rate. However, since Applicant has not set forth any significant structure in the claims, it is reasonable to presume that a reference that meets the structural limitations that are present would inherently meet the desired properties or these properties are obvious to Van Phan. Support for said presumption is found in the use of like materials (i.e. polyacrylate based foam, initiators, monomers, surfactants, and the methods for construction disclosed in Van Phan). The Examiner has no reasonable way to search for Applicant's claimed properties, and cannot conduct tests on the material provided in prior art references to see if they meet the test results provided by the Applicant. The burden is shifted to Applicant to show that the structure of the prior art produces a different product that would not inherently possess the claimed

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characteristics. This should be presented by factual evidence, and in the instant case, the Applicant failed to show a valid side-by-side comparison between their product and the product disclosed by the Van Phan reference.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Phan et al. USPN 5506035.

As to claims 1 and 3-23, Van Phan discloses an absorbent article 20 comprising a liquid permeable surface 24 and an opposite at least substantially liquid impermeable surface 26 and comprising an absorbent structure 28 located between the liquid permeable surface and the substantially liquid impermeable surface, wherein the absorbent structure 24 includes a super absorbent porous structure foam sheet (col. 37, lines 34-54; col. 40, lines 29-32). Van Phan does not disclose the claimed Gurley stiffness value or claimed density. However, with respect to the density, Van Phan teaches a foam density from about 0.1 to about 0.5 g/cm<sup>3</sup> (col. 30, lines 22-24). Van Phan additionally teaches the density can be modified by controlling certain foam composition and processing parameters, such as the additional level of the blowing agent (col. 29, line 67 through col. 30, line 23). Van Phan, thus teaches density is a result effective variable of the additional level of the blowing agent. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Van Phan with the claimed density, since discovering an optimum value of a result effective variable involves only routine skill in the art.

With respect to the claimed Gurley stiffness, it is the Examiner's position that the Gurley stiffness is inherent in the structure taught by Van Phan. Van Phan discloses an absorbent article having an absorbent core, topsheet, and backsheet. In paragraphs 0014, 0015, 0029, 0021, 0029, and 0038 the specification sets forth suitable materials for making the super absorbent porous structure having the claimed characteristics. Van Phan teaches similar materials for the absorbent foam (col. 6, line 10 through col.

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7, line 41; col. 9, lines 5-57; col. 10, lines 13-60; col. 18, lines 20-41; col. 19, lines 34-34; col. 21, lines 35-51).

The present invention is concerned with providing an absorbent structure that is thin, highly absorbent sanitary article that has structural integrity in use. Van Phan teaches an absorbent article having a superabsorbent polymer foam that is highly absorbent and maintains its structural integrity in use. Because Van Phan teaches materials and structure similar to the claimed invention, Van Phan obviously includes a highly absorbent and flexible absorbent article and components capable of achieving the claimed test results. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the reference has met the structural requirements of the claims.

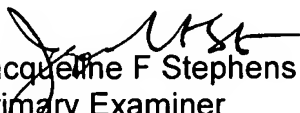
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jacqueline F Stephens  
Primary Examiner  
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April 27, 2007